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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/593,802	01/30/96	WATTERSON	2783

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EXAMINER

ART UNIT	PAPER NUMBER
3302	

DATE MAILED: 07/08/96

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/593,802	Applicant(s) Watterson et al.
	Examiner Lynne A. Reichard	Group Art Unit 3302

☒ Responsive to communication(s) filed on *May 28, 1996*.

☐ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *3* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-9* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-9* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). *2*

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Non-Statutory Provisional Double Patenting

The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and (c) may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending application Serial No. 08/593,801. Although the conflicting claims are not identical, they are not patentably distinct from each other because as broadly as claimed the support structure claimed in claim 1 of the instant application reads on the free standing housing of claim 1 of U.S. Patent Application Serial No. 08/593,801 and other than this difference the scope of the claims is essentially the same.

This is a *provisional* obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-9 are rejected under the judicially created doctrine of double patenting over the claims of copending application numbers 08/593,793, 08/593,795, 08/593,796, 08/593798, and 08/594,271.

The subject matter claimed in the instant application is fully disclosed in the referenced copending applications and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

All of these applications claim the common subject matter of a treadmill having a support structure, a tread base having right and left sides and an endless belt, which is capable of being moved between a first operation position and a second storage position.

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending applications. *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Rejections Under 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section

> 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
>
> Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-5 are rejected under 35 U.S.C. § 103 as being unpatentable over Dalebout et al. '396, hereinafter referred to as "Dalebout", in view of Day and Doetsch.

In regard to claim 1, Dalebout discloses a treadmill comprising: support structure (12) having feet means (57,91) for positioning on a support surface and having an upright structure (42) extending upwardly from said feet means; a tread base having a frame that includes a front, a rear, a left side and a right side and an endless belt (18) positioned between said left side and said right side. Dalebout fails to disclose a tread base connected to said support structure to be moveable between a first position and a second position as claimed. Day teaches a tread base connected to the support structure to be moveable between a first position (Fig. 1) in which said endless belt is positioned for operation by a user positioned thereon and a second position (Fig. 2) in which said rear of said tread base is

moved toward said support structure for storage. It would have been obvious to one of ordinary skill in the art to modify the treadmill discloses by Dalebout to use a tread base movable between a first position and a second position for storage in view of the teaching of Day. Dalebout further fails to disclose lift means interconnected between said enclosure structure and said tread base to urge said tread base from said first position to said second position. Doetsch teaches a lift means interconnected to between members of any device which is adjustable to difference inclinations (column 1 lines 29-41) to urge the members to a predetermined equilibrium position. It would have been obvious to one of ordinary skill in the art to use a lift means to interconnect the enclosure structure and tread base to urge the tread base towards the second or equilibrium position in view of the teachings of Doetsch.

As to claim 2, Doetsch teaches a lift means that is a gas cylinder which continuously urges the members towards the equilibrium position.

As to claim 3, it would have been obvious to one of ordinary skill in the art to attach one end of the gas cylinder to the right or left side, as the right or left side constitute one of the members that the gas cylinder must be connected between to urge the tread base towards the enclosure.

As to claim 4, Dalebout discloses an upright structure having a right upright and a left upright with said tread base positioned thereinbetween. As discussed above attachment to either wall would have been obvious to one of ordinary skill in the art in view of the teachings of Doetsch.

As to claim 5, Day teaches a tread base rotatable about an axis between said first position and said second position wherein said tread base has a rear. It would have been obvious to one of ordinary skill in the art to attach the gas cylinder to the tread base between the rear and the axis as the tread base is the other member that the gas cylinder must be connected to in order to urge the tread base towards the second position.

Indication of Allowable Subject Matter

Claims 6-9 would be allowable upon the filing of the Terminal Disclaimers required to overcome the rejections under non-statutory double patenting and if rewritten to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Lynne A. Reichard at telephone number (703) 308-1159. Additionally, any facsimile transmissions concerning this application should be directed to Lynne A. Reichard at fax number (703) 305-3590.

LYNNE A.REICHARD
PRIMARY EXAMINER
GROUP 3302

Lynne A. Reichard
June 27, 1996